



W.P.No.32199 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **K.RAJASEKAR**

W.P.No.32199 of 2024

M.Jayapal Rajan

... Petitioner

VS

1.The District Collector,
Thiruvarur District,
Vilamal, Thiruvarur.

2.The Tahsildhar,
Needamangalam Taluk,
Needamangalam,
Thiruvarur District – 614 404.

3.N.Moorthy

4.The Executive Engineer,
Water Resources Department,
Thiruvallur Region, Thiruvallur.

... Respondents

(R4 impleaded suo motu vide
order dated 07.11.2024 in
W.P.No.32199 of 2024)

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus to direct and first and second respondents to remove the encroachment and restore the irrigation canal passes through the land in S.No.124/2, 124/3,



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124/4 and 124/6 at Munnavalkottai Village, Needamangalam Taluk, Thiruvarur District in accordance with the Land Encroachment Act, 1905.

For Petitioner : Mr.M.Jayapal Rajan,
Party – in - person

For Respondents : Mr.M.S.Arasakumar,
Government Advocate
for R1, R2 and R4

ORDER

[Order of the Court was made by **M.SUNDAR, J.,**]

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity) has been filed with a prayer for removal of encroachment in a irrigation canal.

2. The petitioner who appears party-in-person before us submits that irrigation to his agricultural lands has been obstructed.

3. Issue notice to respondents.

4. Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R1 an R2 (official respondents).

5. Learned State counsel inter-alia adverting to the response



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which the petitioner has elicited under the Right To Information Act (RTI Act) points out that the alleged encroachment is in a canal (வாய்க்கால் ஆக்ரமணம்) and therefore it is the Water Resources Department which is vested with the powers to take action under the 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007' (hereinafter 'Tanks Act' for the sake of convenience and clarity) and Rules thereunder i.e., 'The Tamil Nadu Protection of Tanks and Eviction of Encroachment Rules, 2007' (hereinafter 'Tanks Rules' for the sake of convenience and clarity).

6. As regards the Tanks Act, the vires was challenged in *T.S.Senthil Kumar's case* [*T.S.Senthil Kumar vs. Government of Tamil Nadu*] Reported in **2010 (3) MLJ 771** and a Division Bench in *T.S.Senthil Kumar's case* upheld the vires. Thereafter, a Full Bench in *T.K.Shanmugam's case* {*T.K.Shanmugam Vs. State of Tamil Nadu* reported in **2015 (5) LW 397**}, while reiterating *T.S.Senthil Kumar's case* upheld the vires of the Tanks Act and laid down the procedure to be followed and the procedure is in sub-clauses (i), (ii) and (iii) of sub-paragraph (f) of paragraph 15 thereat which reads as



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follows:

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'15(f) We uphold the Act, while we provide for observance of principles of natural justice within the Act itself, as under.

(i) When the officer of the Public Works Department publishes the notice in Form-II in the notice boards of the offices of Village Administrative Officer, Village Panchayat Office and the Water Resources Organization, notice shall also be issued to the alleged encroacher to the effect that the survey indicates that the place in his/her occupation is an encroachment and secondly, the notice in Form-III of the Rules may be issued.

(ii) On receipt of the said notice, the encroacher may give his/her objections relating to the classification of the land in his/her occupation and the nature of the encroachment within a period of two weeks.

(iii) Thereafter, the authorities shall consider the objections and pass appropriate orders, in accordance with the provisions of the Act, giving time to the encroachers to remove the



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encroachment.'

7. Therefore, we suo motu implead Executive Engineer, Water Resources Department, Thiruvallur Region, Thiruvallur as R4 and Mr.M.S.Arasakumar, learned Government Advocate accepts notice for R4 also.

8. Learned State counsel submits that R4 will now initiate action in accordance with Tanks Act and Tanks Rules. It will suffice to record the submission. Let the law take its own course. All the rights and contentions of alleged encroachers are preserved to the extent that they can raise all their grounds while action under Tanks Act and Tanks Rules is initiated.

9. Captioned WP is disposed of recording the stated position of the learned State counsel. There shall be no order as to costs.

(M.S.,J.) (K.R.S.,J.)
07.11.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The District Collector,
Thiruvarur District,
Vilamal, Thiruvarur.
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Needamangalam Taluk,
Needamangalam,
Thiruvarur District – 614 404.
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Thiruvallur Region, Thiruvallur.



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**M.SUNDAR, J.,
and
K.RAJASEKAR, J.,**

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ADDENDA

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and

K.RAJASEKAR, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Captioned WP is listed under the cause list caption 'FOR BEING MENTIONED'.

2. With regard to R4 which was suo-motu impleaded vide order dated 07.11.2024, learned State Counsel has erroneously given the region as 'Thiruvallur Region' whereas it should read as 'Tiruvarur Region'. Learned State Counsel expresses regret.

3. Mr.M.Jayapal Rajan, party-in-person / petitioner is also present before this Court.



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4. With the consent of both sides, the region Thiruvallur occurring in five places of order dated 07.11.2024 in W.P.No.32199 of 2024, one place in Page No.1, two places in Page No.5, two places in Page No.6 are now corrected as 'Tiruvarur'. In all other aspects, order dated 07.11.2024 vide which the captioned WP was disposed of will remain the same. This proceedings will now serve as addenda / corrigendum to 07.11.2024 order and therefore, this proceedings shall be uploaded again along with 07.11.2024 order. Registry is directed to carry out necessary and consequential corrections.

[M.S., J] [K.R.S., J]

28.11.2024

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M.SUNDAR, J.,
and
K.RAJASEKAR, J.,

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